

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caroline Moses	Team: Squad #13	CCRB Case #: 201909824	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/01/2019 5:00 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 77	18 Mo. SOL 4/1/2021	EO SOL 11/16/2021	
Date/Time CV Reported Thu, 10/31/2019 8:26 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/11/2019 11:59 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Gabriel Cuevas	02226	945633	077 PCT
2. POM Corey Johnson	13116	960090	077 PCT
3. POM Andrew Tofalli	26431	955584	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas stopped § 87(2)(b)	§ 87(2)(b)
B.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas frisked § 87(2)(b)	§ 87(2)(b)
C.POM Corey Johnson	Abuse: Police Officer Corey Johnson frisked § 87(2)(b)	§ 87(2)(b)
D.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas searched § 87(2)(b)	§ 87(2)(b)
E.POM Corey Johnson	Abuse: Police Officer Corey Johnson searched § 87(2)(b)	§ 87(2)(b)
F.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas frisked § 87(2)(b)	§ 87(2)(b)
G.POM Corey Johnson	Abuse: Police Officer Corey Johnson frisked § 87(2)(b)	§ 87(2)(b)
H.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas searched § 87(2)(b)	§ 87(2)(b)
I.POM Corey Johnson	Abuse: Police Officer Corey Johnson searched § 87(2)(b)	§ 87(2)(b)
J.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On October 31, 2019, § 87(2)(b) called IAB and filed this complaint on behalf of himself and his friend, § 87(2)(b). It was received by the CCRB on November 11, 2019.

On October 1, 2019, § 87(2)(b) was standing on the sidewalk outside § 87(2)(b) in Brooklyn with his friends, § 87(2)(b) and § 87(2)(b) (last name unknown). Police Officer Corey Johnson, Police Officer Andrew Tofalli, and Sergeant Gabriel Cuevas, all of the 77th Precinct, stopped § 87(2)(b) and § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g) PO Johnson, in the presence of Sgt. Cuevas, frisked and searched § 87(2)(b) (**Allegations B through E: Abuse of Authority**, § 87(2)(g) and § 87(2)(b) (**Allegations F through I: Abuse of Authority**, § 87(2)(g) Sgt. Cuevas and PO Johnson allegedly tried to knock § 87(2)(b)'s phone, which he was using to record the incident, from his hands (**Allegations J: Abuse of Authority**, § 87(2)(g) § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was issued a summons for unlawful possession of marijuana (**Board Review 19**). The Office of Court Administration (“OCA”) does not have any record of the disposition of this summons (**Board Review 25**). § 87(2)(b) was not arrested or summonsed.

PO Johnson’s and PO Tofalli’s body-worn cameras captured this incident. The BWC footage can be found in IAs # 64 – 66 (**Board Review 01-03**), and the summaries can be found in IA # 67 – 69 (**Board Review 04-06**). § 87(2)(b) recorded this incident on his cell phone, and he provided this footage to the investigation. The cell phone video can be found in IAs 34 – 36 (**Board Review 07-09**), and the summaries can be found in IAs # 46 – 48 (**Board Review 10-12**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Gabriel Cuevas stopped § 87(2)(b)

§ 87(2)(b) said that immediately prior to this incident, he was standing in front of § 87(2)(b) in Brooklyn with § 87(2)(b) and § 87(2)(b) and § 87(2)(b) were smoking marijuana. § 87(2)(b) denied smoking marijuana, citing the fact that he cannot do so because he gets drug-tested at his job (**Board Review 13**). Sgt. Cuevas, PO Johnson, and PO Tofalli approached in a police car and one of them called out the window, “You guys smoking weed?” § 87(2)(b) responded, “Yeah.” All three officers exited the car and approached § 87(2)(b) and his friends. § 87(2)(b) and § 87(2)(b) were unavailable to the investigation (See IAs for contact attempts).

PO Johnson said the officers were driving eastbound on § 87(2)(b) in an unmarked sedan at approximately five miles per hour when from about five to ten car-lengths away, he first smelled marijuana, then observed § 87(2)(b) hand what he recognized to be a marijuana cigarette to § 87(2)(b) presumably either to discard or secret it (**Board Review 14**). PO Johnson was seated in the rear driver’s side seat of the car, and PO Tofalli was driving. All the officers approached § 87(2)(b) and § 87(2)(b) together.

Sgt. Cuevas said he was the one sitting in the back seat, and that PO Johnson was sitting in the front passenger seat. Sgt. Cuevas smelled marijuana before PO Johnson shared his observation of the marijuana cigarette, but said it was § 87(2)(b) whom PO Johnson pointed out, and whom Sgt. Cuevas personally observed holding a marijuana cigarette, which he recognized as marijuana from its wrapping as well as the odor of marijuana in the vicinity (**Board Review 15**). Sgt. Cuevas said PO Johnson approached § 87(2)(b) alone at first, and he and PO Tofalli approached three

PO Johnson searched § 87(2)(b)'s pockets as well. Sgt. Cuevas could not recall whether § 87(2)(b) was searched. PO Tofalli did not recall this incident.

PO Johnson (**Board Review 14**) said he approached § 87(2)(b) and § 87(2)(b) with the intention of issuing them summonses for possession of marijuana, and that when he reached them, the marijuana cigarette was no longer visible. He frisked and searched § 87(2)(b) and § 87(2)(b) to recover the marijuana cigarette. He did not see anything at any point that led him to suspect that § 87(2)(b) or § 87(2)(b) were armed. PO Johnson did not find marijuana inside either man's pockets. Sgt. Cuevas did not recall whether PO Johnson told him why he frisked § 87(2)(b) but he believed it was to find the marijuana cigarette (**Board Review 15**).

People v. DeBour, 40 N.Y.2d 210 (1976) (**Board Review 17**) states that officers may frisk someone if and only if they have a reasonable suspicion that they are armed and dangerous. If an apparent weapon is revealed in the course of a frisk, a limited search may be conducted only of the area where the apparent weapon was discovered. Frisks or warrantless searches for contraband are not permitted.

Because Sgt. Cuevas was the supervisor present during the frisks and searches, these allegations have been pled to both him and PO Johnson.

§ 87(2)(b), § 87(2)(g)

Allegation (J) Abuse of Authority: Sergeant Gabriel Cuevas interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) said that after he was searched, Sgt. Cuevas ordered him to produce his identification. As § 87(2)(b) was reaching into his pocket to retrieve his identification, PO Johnson, Sgt. Cuevas, and PO Tofalli all grabbed his wrists (**Board Review 13**). § 87(2)(b) believed the officers grabbed his wrists to cause his phone, which he was using to record the incident, to fall out of his hand. § 87(2)(b) asked the officers whether they wanted his hands or his identification. Sgt. Cuevas said, "Your ID," and the officers released § 87(2)(b)'s wrists.

PO Johnson and Sgt. Cuevas both said they grabbed § 87(2)(b)'s wrists because he made a motion to push something into his pants pocket, and they were attempting to prevent him from putting away a small § 87(2)(b) container from which they ultimately recovered marijuana. Sgt. Cuevas said he removed the container from § 87(2)(b)'s hand and threw it on the ground, from where he later instructed PO Johnson to pick it up and voucher it (**Board Review 15**). PO Johnson had previously told him that § 87(2)(b) had put his hands in his pockets. PO Johnson said the container was recovered from the pocket that § 87(2)(b) reached into but he could not recall whether he or Sgt. Cuevas found it (**Board Review 14**). PO Johnson said Sgt. Cuevas noticed the motion that § 87(2)(b) made and grabbed § 87(2)(b)'s wrist first. All three officers denied attempting to interfere with § 87(2)(b)'s ability to record the incident (**Board Review 16**).

PO Tofalli's body-worn camera footage (**Board Review 01**), between the 00:16 and 00:35 minute marks of the media player timestamp, visible at the bottom of the screen, captures Sgt. Cuevas ordering § 87(2)(b) to provide his identification, then grabbing § 87(2)(b)'s left wrist and PO Johnson subsequently grabbing § 87(2)(b)'s right wrist. § 87(2)(b) has a cell phone in one hand and a wallet in his other hand. After several seconds, the officers release § 87(2)(b)'s wrists. § 87(2)(b)

asks if the officers want his hands or his identification. For much of the video, § 87(2)(b) s hands are not in the frame.

§ 87(2)(b) s cell phone footage captures this portion of the incident from the 00:50-01:44 timestamps (**Board Review 07**). It does not capture § 87(2)(b) s hands, however at 01:04, § 87(2)(b) and PO Johnson are discussing a container and the fact that § 87(2)(b) previously said it contained marijuana. This container is never visible in the frame.

PO Johnson's testimony and PO Tofalli's body-worn camera footage indicate that Sgt. Cuevas, the supervisor on scene, initiated the action of restraining § 87(2)(b) s wrists, so this allegation is pled against him.

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(g), § 87(4-b)
[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g), § 87(4-b)
[REDACTED]

- § 87(2)(b) [REDACTED]
- [REDACTED]
- Sgt. Cuevas has been a member of service for 12 years and has been a subject of 11 CCRB complaints and 31 allegations, of which five were substantiated. Both cases in which allegations were substantiated, CCRB #201610447 and CCRB #201804454, included substantiated frisk allegations.
 - CCRB #201610447 involved substantiated allegations of a stop, a frisk, and refusal to provide name/shield against Sgt. Cuevas. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
 - CCRB #201804454 involved substantiated allegations of a frisk and a search of person against Sgt. Cuevas. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
- PO Johnson has been a member of service for four years and has been a subject of three complaints comprised of three allegations, none of which were substantiated. § 87(2)(g) [REDACTED]
- PO Tofalli has been a member of service for six years and has been a subject of two complaints comprised of three allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

- § 87(2)(b) declined to mediate this complaint.
- As of January 24, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 23**).
- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] OCA does not list any other convictions (**Board Review 24**).
- § 87(2)(b)'s conviction history remains unknown due to his common name and the investigation's inability to obtain his date of birth to narrow down database search results.

Investigator:	<u> </u>	<u>Inv. Caroline Moses</u>	<u>04/21/2020</u>
	Signature	Print Title & Name	Date
Squad Leader:	<u> </u>	<u>IM Laura Kastner</u>	<u>04/21/2020</u>
	Signature	Print Title & Name	Date